REMARKS

Restriction/Election

Restriction to one of the following inventions has been required under 35 USC 121:

I. Claims 1-2,drawn to a biopolymer marker, comprising SEQ ID NO:1, classified in class 530, subclass 300.

II. Claims 1-2,drawn to a biopolymer marker, comprising SEQ ID NO:2, classified in class 530, subclass 300.

III. Claims 1-2,drawn to a biopolymer marker, comprising SEQ ID NO:3, classified in class 530, subclass 300.

IV. Claims 3-9,drawn to a method for categorizing a disease state, classified in class 424, subclass 93.1.

V. Claims 10-28, drawn to a diagnostic assay kit, classified in class 422, subclass 61.

VI. Claims 29-32, drawn to polyclonal antibodies, classified in 436, subclass 547.

VII. Claims 33-37, drawn to a method for identifying a therapeutic process related to a disease state, classified in class 436, subclass 517.

VIII. Claim 38, drawn to a method for regulating a disease state, classified in class 435, subclass 7.1.

Applicants here elect with traverse Group I (claims 1 and 2, as drawn to a biopolymer marker, comprising SEQ ID NO:1) for prosecution on the merits.

The amino acid sequences identified as SEQ ID NOS:1-3 are each fragments of apolipoproteins found in sera. Apolipoproteins are lipid-protein conjugates which are found in cellular membranes, cellular cytoplasm and blood sera. Apolipoproteins found in sera function to transport insoluble molecules such as triacylglycerols, cholesterol and phospholipids. Since each of the three claimed amino acid fragments are parts of apolipoprotein found in sera, the sequence structure of the larger "parent" apolipoprotein is considered to be a shared structural feature between SEQ ID NOS:1-3. Furthermore, since nucleotide sequences encoding the same protein are not considered by the Office to be independent and distinct inventions and are examined together (see MPEP 803.04), it follows that amino acid sequences encoding the same protein should be examined together.

SEQ ID NOS: 1-3 are identified by the instant inventors as protein fragments which are predictive of insulin resistance. Thus, SEQ ID NOS:1-3 share a common utility as markers predictive of disease.

Additionally, the Examiner's attention is drawn to the fact that the instant application claims three short amino acid

sequences, seven sequences less than the ten sequences normally considered by the Office as reasonable for examination purposes.

If the fragments of SEQ ID NOS:1-3 are found to be novel, methods and kits limited to their use should also be novel.

This application is related in claim format to several pending applications of which serial number 09/846,352 is exemplary. The biopolymer marker of serial number 09/846,352 was found to be novel and subsequently claims reading on methods and kits limited to its use were rejoined with the claims reading on the biopolymer marker under *Ochai*. In an effort to maintain equivalent scope in all of these applications, Applicants respectfully request that the Examiner reconsider the restriction requirement in the instant application to include the new claims (39-46) added herein by amendment.

Claim Status/Support For Claim Amendments

Claim 1 has been amended. Claims 2-38 have been canceled. Claims 39-46 have been added.

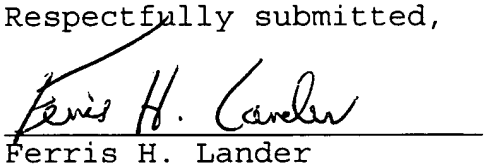
No new matter has been added by the addition of new claims 39-46. The above additions to the claims find basis in the original disclosure at page 25, line 16 to page 26, line 22. The method of new claim 39 is described in detail at pages 37-47. Page 47, line 20 to page 48, line 1 refers to use of various types of samples and page 38, line 20 to page 39, line 10 refers

to different mass spectrometric techniques. Page 46, line 20 refers to practicing the claimed methods with a human patient. Pages 47-48 describe kits contemplated for use with the claimed methods. Lines 17-20 on page 47 refer particularly to the immobilizing on solid supports and labeling of components of the contemplated kits. It is clear from these specific recitations and from the description of methods utilized that the methods and types of kits recited in the newly added claims (39-46) were fully contemplated by the inventors at the time of filing and were enabled by virtue of the disclosure as originally filed.

CONCLUSION

Now that applicants have fully responded to the Office Action mailed on May 19, 2003, an examination on the merits is respectfully requested.

Respectfully submitted,



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